

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE
NOVEMBER 17, 2020**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY ON TIMBERLAKE ESTATES HOMEOWNERS ASSOCIATION FOR FAILURE TO TIMELY FILE ANNUAL LICENSEE REPORT FOR WATER-RIGHT LICENSE 7716 (APPLICATION A017108) FOR 2018 DIVERSIONS AND USE

DISCUSSION

On July 1, 2019, an Assistant Deputy Director of the Board's Division of Water Rights (Division) issued an Administrative Civil Liability Complaint (ACL Complaint) to Timberlake Estates Homeowners Association (Respondent), holder of water-right License 7716 (Application A017108), based on Respondent's failure to timely file its annual licensee report for its 2018 diversions and use. The ACL Complaint stated that the total maximum potential liability for Respondent's failure to file its water-right licensee report for 2018 was \$45,000, based on an alleged violation for 90 days and the maximum penalty of \$500 per day under Water Code section 1846. The ACL Complaint recommended the imposition of \$2,000 in administrative civil liability.

The ACL Complaint contained an "EXPEDITED SETTLEMENT OFFER" that, if accepted by Respondent, would reduce the administrative civil liability to \$500 in return for Respondent's waiver of its right to a hearing and Respondent's filing of the water-right licensee report for 2018 within 30 days.

Respondent did not accept the Division's settlement offer and requested a hearing. Respondent filed its licensee report for 2018 on July 7, 2019.

The Administrative Hearings Office (AHO) held a hearing on the ACL Complaint on June 19, 2020. On September 11, 2020, the AHO transmitted its proposed order to the Clerk of the Board.

The AHO's proposed order discusses the relevant facts and the statutory factors the Board is to consider when deciding the appropriate amount of administrative civil liability. Considering these factors, the proposed order concludes that \$500 is the appropriate administrative civil liability amount. While Respondent did not accept the Division's settlement offer, Respondent complied with the part of the settlement offer that required Respondent to file its water-right licensee report for 2018 within 20 days of Respondent's receipt of the ACL Complaint, and Respondent did not take any actions that would justify a higher civil liability amount. During the hearing, Respondent's representative acknowledged the importance of filing Respondent's future annual water-

right licensee reports on time, and she filed Respondent's report for 2019 before the applicable deadline. The \$500 administrative civil liability amount is consistent with the testimony of the Division's witness that this amount is "low enough to encourage voluntary corrective action, but still high enough to encourage voluntary compliance in the future."

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

The activity is budgeted within existing resources and no additional fiscal demands will result from approval of the proposed order.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The AHO recommends that the State Water Board adopt the proposed order.